

Union Calendar No. 130

108TH CONGRESS
1ST SESSION**H. R. 1303****[Report No. 108-239]**

To amend the E-Government Act of 2002 with respect to rulemaking
authority of the Judicial Conference.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2003

Mr. SMITH of Texas (for himself and Mr. TOM DAVIS of Virginia) introduced
the following bill; which was referred to the Committee on the Judiciary

JULY 25, 2003

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the E-Government Act of 2002 with respect to
rulemaking authority of the Judicial Conference.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. RULEMAKING AUTHORITY OF JUDICIAL CON-**
 2 **ERENCE.**

3 Section 205(c) of the E-Government Act of 2002
 4 (Public Law 107–347) is amended by striking paragraph
 5 (3) and inserting the following:

6 “(3) **PRIVACY AND SECURITY CONCERNS.**—The
 7 Judicial Conference of the United States may pro-
 8 mulgate rules to protect privacy and security con-
 9 cerns relating to the electronic filing of documents,
 10 and the public availability of documents filed elec-
 11 tronically, pursuant to this subsection.”.

12 **SECTION 1. RULEMAKING AUTHORITY OF JUDICIAL CON-**
 13 **ERENCE.**

14 Section 205(c) of the E-Government Act of 2002 (Pub-
 15 lic Law 107–347; 44 U.S.C. 3501 note) is amended by strik-
 16 ing paragraph (3) and inserting the following:

17 “(3) **PRIVACY AND SECURITY CONCERNS.**—
 18 “(A)(i) The Supreme Court shall prescribe
 19 rules, in accordance with sections 2072 and 2075
 20 of title 28, United States Code, to protect pri-
 21 vacy and security concerns relating to electronic
 22 filing of documents and the public availability
 23 under this subsection of documents filed elec-
 24 tronically or converted to electronic form.

1 “(ii) Such rules shall provide to the extent
2 practicable for uniform treatment of privacy and
3 security issues throughout the Federal courts.

4 “(iii) Such rules shall take into consider-
5 ation best practices in Federal and State courts
6 to protect private information or otherwise
7 maintain necessary information security.

8 “(iv) Except as provided in clause (v), to
9 the extent that such rules provide for the redac-
10 tion of certain categories of information in order
11 to protect privacy and security concerns, such
12 rules shall provide that a party that wishes to
13 file an otherwise proper document containing
14 such protected information may file an
15 unredacted document under seal, which shall be
16 retained by the court as part of the record, and
17 which, at the discretion of the court and subject
18 to any applicable rules issued in accordance
19 with chapter 131 of title 28, United States Code,
20 shall be either in lieu of, or in addition to, a re-
21 dacted copy in the public file.

22 “(v) Such rules may require the use of ap-
23 propriate redacted identifiers in lieu of protected
24 information described in clause (iv) in any
25 pleading, motion, or other paper filed with the

1 *court (except with respect to a paper that is an*
2 *exhibit or other evidentiary matter, or with re-*
3 *spect to a reference list described in this sub-*
4 *clause), or in any written discovery response—*

5 *“(I) by authorizing the filing under*
6 *seal, and permitting the amendment as of*
7 *right under seal, of a reference list that—*

8 *“(aa) identifies each item of*
9 *unredacted protected information that*
10 *the attorney or, if there is no attorney,*
11 *the party, certifies is relevant to the*
12 *case; and*

13 *“(bb) specifies an appropriate re-*
14 *dacted identifier that uniquely cor-*
15 *responds to each item of unredacted*
16 *protected information listed; and*

17 *“(II) by providing that all references*
18 *in the case to the redacted identifiers in*
19 *such reference list shall be construed, with-*
20 *out more, to refer to the corresponding*
21 *unredacted item of protected information.*

22 *“(B)(i) Subject to clause (ii), the Judicial*
23 *Conference of the United States may issue in-*
24 *terim rules, and interpretive statements relating*
25 *to the application of such rules, which conform*

1 to the requirements of this paragraph and which
2 shall cease to have effect upon the effective date
3 of the rules required under subparagraph (A).

4 “(ii) Pending issuance of the rules required
5 under subparagraph (A), any rule or order of
6 any court, or of the Judicial Conference, pro-
7 viding for the redaction of certain categories of
8 information in order to protect privacy and se-
9 curity concerns arising from electronic filing or
10 electronic conversion shall comply with, and be
11 construed in conformity with, subparagraph
12 (A)(iv).

13 “(C) Not later than 1 year after the rules
14 prescribed under subparagraph (A) take effect,
15 and every 2 years thereafter, the Judicial Con-
16 ference shall submit to Congress a report on the
17 adequacy of those rules to protect privacy and se-
18 curity.”.

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